



MINUTES

Sexual and Other Criminal Offenses, Criminal Penalties, and Sentencing Practices Study Committee

November 30, 2005

MEMBERS PRESENT:

Senator Keith Kreiman,
Co-chairperson
Senator Larry McKibben,
Co-chairperson
Senator Jeff Angelo
Senator Dick Dearden
Senator Robert Dvorsky
Senator Pat Ward

Representative Lance Horbach,
Co-chairperson
Representative Joe Hutter
Representative Rick Olson
Representative Kurt Swaim
Representative Jim Van Fossen

MEETING IN BRIEF

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- I. Procedural Business.
- II. Introductory Comments.
- III. Iowa County Attorneys Association.
- IV. State Public Defender.
- V. Iowa Coalition Against Sexual Assault (ICASA).
- VI. Iowa State Sheriffs and Deputies Association (ISSDA).
- VII. Committee Discussion and Recommendations.
- VIII. Materials Filed With the Legislative Services Agency.



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I. Procedural Business.

Call to Order. Co-chairperson McKibben called the meeting to order at 10:04 a.m. on Wednesday, November 30, 2005, in Room 22 of the State Capitol.

Minutes. The minutes of the previous meeting of the Committee on October 26, 2005, were approved on a voice vote.

Adjournment. The Committee adjourned at 1:46 p.m.

II. Introductory Comments.

Co-chairperson McKibben stated that despite media reports to the contrary, no agreements have been made between the Senate Republicans and Democrats concerning any of the issues being considered by this Committee. He commented that the Committee needs to take time to absorb and reflect on all of the information received by the Committee before any recommendations are made. He further stated that although this Committee will not be dealing with the issue of the reinstatement of the death penalty for persons who kidnap, rape, and murder children, he intends to reintroduce death penalty legislation from the 2005 Legislative Session at the beginning of the 2006 Legislative Session.

III. Iowa County Attorneys Association.

Mr. Tom Ferguson, Black Hawk County Attorney, and Ms. Nan Horvat, Assistant Polk County Attorney, appeared before the Committee to answer questions relating to the prosecution and enforcement of the 2,000-foot sex offender residency restriction law contained in H.F. 619.

Prosecutions. Senator Angelo asked what the Legislature can do to help with the problem of prosecuting cases involving sexual offenders where often the only witness in such cases is the victim or a relative of the accused. Mr. Ferguson responded that although H.F. 619 increased the penalties for repeat sex offenders, the question of whether the threat of such penalties aids in the prosecution of such cases remains to be seen. He commented that increased penalties can hinder the plea negotiating process in some cases and help in other cases.

Enforcement Issues. Co-chairpersons Horbach and Kreiman stated they would like to receive specific draft language from Mr. Ferguson to address enforcement issues relating to H.F. 619 that Mr. Ferguson identified during the Committee's October 26 meeting. Co-chairperson Horbach also raised the issue of whether it is more beneficial for local communities to adopt ordinances restricting the residence of a sex offender, as local communities should be able to decide for themselves who can and cannot live in their communities. Ms. Horvat commented that a uniform law with uniform application throughout the state may be more beneficial for the law enforcement community.

Other Options. Senator Dvorsky asked what more the Legislature can do to enhance public safety besides the 2,000-foot residency restriction. Mr. Ferguson responded that safe zones restricting where sex offenders can and cannot be present, such as schools, parks, and shopping malls, is a good idea. He also suggested that the General Assembly take a look at the risk

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assessment tools in place and provide more effective resources to monitor sex offenders. Senator Dvorsky expressed the opinion that the criminal justice system is spending a large amount of resources and time on enforcing the 2,000-foot residency restriction when it may be more appropriate to focus on the offenders who are most likely to reoffend.

Effectiveness. Representative Olson asked whether the 2,000-foot residency restriction actually provides protection for children. Ms. Horvat commented that the residency restriction language needs clarification as the requirement that a sex offender shall not reside within 2,000 feet of the real property of a school or child care facility is confusing in regard to how property boundaries are determined. She further noted that in-home day care providers are often not registered as the providers do not want sex offenders to know where they are running a child care business.

IV. State Public Defender.

Mr. Mark Smith, Assistant Public Defender, stated he has reviewed at length the language in H.F. 619 and posed the following questions:

- Does the law apply only to child sex offenders? He noted that many county attorneys are charging persons who have never committed a crime against a child. He stated this ambiguity in the law needs to be clarified.
- Are the exemptions in the 2,000-foot residency restriction law for persons serving jail and prison sentences applicable to those defendants placed on electronic monitoring? He suggested that an exception should be created for monitored offenders as the residency restriction may place barriers on the accessibility of inpatient treatment programs for sex offenders.
- Did the law intend to cover a person who was a sex offender many years ago but who is now and has been living in their community as a law-abiding citizen for the past 25 years?
- Mr. Smith stated that the state should prohibit local ordinances placing residency restrictions on sex offenders because local ordinances in combination with the state law effectively constitute banishment of sex offenders, which is most likely unconstitutional.
- Does a violation of the law constitute ongoing criminal conduct?

Committee discussion reiterated the concern about the need to explore safety zones and referenced safety zone legislation recently passed in Illinois. Mr. Smith noted his concern with the Illinois law, stating the need to specifically define the conduct that is prohibited. Committee members emphasized their desire that the state task force reviewing sex offender issues make recommendations on protecting the public in general from sex offenders and not just on residency restrictions for sex offenders. Mr. Smith said he is a member of the state task force and that the task force's charge is narrowly and clearly defined.

V. Iowa Coalition Against Sexual Assault (ICASA).

Ms. Liz Hoskins, Executive Director of Waypoint in Cedar Rapids, explained that Waypoint is a human services agency advocating for, educating, and supporting women in such areas as crisis



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counseling, individual peer counseling, support groups, medical and criminal justice system advocacy, and personal advocacy in the Cedar Rapids community. Ms. Hoskins thanked the General Assembly for responding to the needs of crime victims last session. On behalf of ICASA, Ms. Hoskins stated and discussed the following recommendations for legislative action:

- Notice to sexual assault victims of their right to request the presence of a victim counselor at any proceeding related to an assault, including a medical examination.
- A statement of general rights of sexual assault victims.
- Civil protection orders for victims of sexual assault in cases that are not prosecuted.
- Sex offender task force monitoring of the effects of implementing the sex offender residency restrictions.
- Sex offender cohabitation restrictions.
- Support for prevention efforts.

Committee discussion focused on the need to emphasize prevention efforts to prevent sexual abuse from occurring in the first place. Ms. Hoskins discussed the issue of bystander intervention and support as a necessary part of any prevention effort program. She also discussed the need to shift the focus away from certain programs aimed at children back to the adults who are responsible for community safety. She further noted that, in regard to one particular community's efforts, service providers are doing a better job of protecting children as many service providers in that particular community are working together and more community resources are available for children. Committee members commented that children are best protected when the entire community is involved and that funding resources should be devoted to such local community efforts.

VI. Iowa State Sheriffs and Deputies Association (ISSDA).

Ms. Susan Cameron, ISSDA lobbyist, stated that the ISSDA supports enhanced restrictions, supervision, and penalties for sexual predators in Iowa, including the creation of "safe zones"; prohibiting sexual predators who commit a sexual offense against a minor from being present in schools, child care locations, parks, libraries, or any other places where children congregate; implementing a notification requirement for sex offenders who are parents of child care or school-age children who visit or volunteer at such sites; enhancing electronic monitoring systems for sex offenders, particularly high-risk sex offenders; implementing the proposed statutory changes proposed by the Iowa County Attorneys Association; and evaluating the impact of the 2,000-foot residency restriction on sex offenders in regard to public safety, risk assessments, local ordinances, and the fiscal impact on local government and law enforcement.

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VII. Committee Discussion and Recommendations.

Several Committee members commented that the Committee received a lot of important information and that many different approaches were advanced to improve on what the General Assembly did last session. Members commented on the multifaceted nature of the discussion, including prevention, treatment, and penalty provisions. The Committee did not adopt any recommendations. Committee members agreed that many of the issues need to be studied further and that members should continue to examine the need for legislative changes to make the system stronger and to provide greater protection for Iowa's communities and children. Committee discussion further noted that prevention efforts are an important part of the discussion.

VIII. Materials Filed With the Legislative Services Agency.

The items listed below were distributed to Committee members at or in connection with the November 30 meeting and are filed with the Legislative Services Agency. The materials can be accessed via the "Additional Information" link on the Committee's Internet page at <http://www.legis.state.ia.us/aspx/Committees/Committee.aspx?id=77>.

1. 11/30/2005 - DCI Receives Grant for Internet Crimes
2. 11/30/2005 - ICASA Suggested Change to Iowa Code
3. 11/30/2005 - ICASA Written Testimony
4. 11/30/2005 - Iowa State Sheriffs and Deputies Association - Written Testimony
5. 11/30/2005 - Memorandum of Responses to Questions Regarding Sex Offender Issues
by Beth Lenstra and Jennifer Acton
6. 11/30/2005 - Rape in Iowa Report
7. 11/30/2005 - The Council of State Governments Weekly Bulletin

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